

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 LATWAHN MCELROY, ) Case No.: 1:23-cv-0559 JLT SKO (PC)  
12 Plaintiff, )  
13 v. ) ORDER ADOPTING FINDINGS AND  
14 CASTRO, et al., ) RECOMMENDATIONS IN FULL AND DENYING  
15 Defendants. ) PLAINTIFF’S APPLICATION TO PROCEED  
16 ) IN FORMA PAUPERIS  
17 ) (Doc. 11)

---

18 Plaintiff seeks to hold the defendants liable for civil rights violations pursuant to 42 U.S.C. §  
19 1983, and he seeks leave to proceed *in forma pauperis* in this action. (Docs. 1, 4.) The magistrate  
20 judge found Plaintiff filed seven prior lawsuits that were dismissed as frivolous or for Plaintiff’s  
21 failure to state a claim upon which relief may be granted. (Doc. 6 at 2.) Therefore, the magistrate  
22 judge found Plaintiff is subject to the three strikes bar imposed by 28 U.S.C. § 1915(g). (*Id.*) The  
23 magistrate judge also found the allegations in Plaintiff’s complaint do not “present a genuine  
24 emergency where time is pressing, and the threat is real.” (*Id.* at 3.) Thus, the magistrate judge found  
25 the allegations do not satisfy the “imminent danger of serious physical injury” exception to Section  
26 1915(g), and recommended Plaintiff’s motion to proceed *in forma pauperis* be denied and that he be  
27 ordered to pay the \$402 filing fee in full. (*Id.*)

28 Plaintiff filed objections to the Findings and Recommendations on May 25, 2023. (Doc. 11.)

1 However, Plaintiff does not address the findings of the magistrate judge that he is subject to the three  
2 strikes bar, and he does not identify any facts—either in his complaint or the objections—to support a  
3 conclusion that he is in imminent danger of serious physical injury. (*See id.* at 1-8.)

4 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de novo* review of this case.  
5 Having carefully reviewed the matter, including Plaintiff's objections, the Court concludes the Findings  
6 and Recommendations are supported by the record and proper analysis. Accordingly, the Court

7 **ORDERS:**

- 8 1. The Findings and Recommendations issued on April 21, 2023 (Doc. 6) are **ADOPTED**  
9 in full.
- 10 2. Plaintiff's motion to proceed in forma pauperis (Doc. 4) is **DENIED**.
- 11 3. Plaintiff **SHALL** pay the \$402 filing fee within 30 days of service of this order.
- 12 4. Plaintiff is advised that failure to pay the required filing fee as ordered will result in the  
13 dismissal of this action without prejudice.

14  
15 IT IS SO ORDERED.

16 Dated: **June 19, 2023**

  
UNITED STATES DISTRICT JUDGE